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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
JAMES SAUNDERS,)	
Employee)	OEA Matter No. 2401-0259-09
)	
v.)	Date of Issuance: March 25, 2011
)	
OFFICE OF PUBLIC EDUCATION)	
FACILITIES MODERNIZATION,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Administrative Judge
)	
Mark Murphy, Esq., Employee Representative		
Charles Brown, Jr., Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 2, 2009, James Saunders (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Office of Public Education Facilities Modernization (“OPEFM” or “the Agency”) action of abolishing his position through a Reduction-In-Force (“RIF”). The effective date of the RIF was September 29, 2009. At the time his position was abolished, Employee’s official position of record within the Agency was General Woodwork Repairer. Agency asserts that Employee entire competitive level and area was abolished.

I was assigned this matter on or around February 9, 2011. Thereafter, a prehearing conference was convened in order to assess the parties’ arguments. I then issued an Order dated December 3, 2010, wherein I required the Employee to address whether the Agency properly conducted the RIF in this matter as well as whether the this OEA may exercise jurisdiction over this matter due to Employee’s retirement. I decided that an evidentiary hearing was not required. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this Office may exercise jurisdiction over this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

According to the documents of record, Employee admits that he retired but contends that he was not adequately informed as to the impact that his choice would have on his ability to pursue his appeal before the OEA. He further asserts that since he retired after the effective date of the RIF, that he should not be precluded from exercising his appeal rights through the OEA. Since retiring, Employee has had continued access to his health benefits as well as his monthly retirement annuity.

Agency contends that Employee was provided with the information necessary in order to make an informed choice on whether to retire or endure the consequences of the RIF. Further, the facts and circumstances surrounding Employee's retirement was Employee's own choice and Employee has enjoyed the benefits of retiring e.g. retirement annuity and continued health care benefits. Agency further contends that Employee's decision to retire was voluntary. *See Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975). Lastly, Agency argues that the circumstances surrounding Employee's retirement preclude the OEA from exercising jurisdiction over the instant matter.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

(a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . .

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 629.1, *id.*, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue."

This Office has no authority to review issues beyond its jurisdiction. *See Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (Sept. 30, 1992), __ D.C. Reg. __ (). Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding. *See Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993), __ D.C. Reg. __ (); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (Jan. 22, 1993), __ D.C. Reg. __ (); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on*

Petition for Review (July 7, 1995), ___ D.C. Reg. ___ ().

The issue of an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. The law is well settled with this Office, that there is a legal presumption that retirements are voluntary. *See Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975); *Charles M. Bagenstose v. D.C. Public Schools*, OEA Matter No. 2401-1224-96 (October 23, 2001), ___ D.C. Reg. ___ (). This Office lacks jurisdiction to adjudicate a voluntary retirement. However, a retirement where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office. *Id.* at 587. A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception." *See Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995), and *Covington v. Department of Health and Human Services*, 750 F.2d 937 (Fed. Cir. 1984). The Employee must prove that his retirement was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which he relied when making his decision to retire. He must also show "that a reasonable person would have been misled by the Agency's statements." *Id.*

Regardless of Employee's protestations to the contrary, it is irrelevant whether he opted to resign or retire prior to or after the abolishment of his former position of record. Under the instant circumstances, the fact that he chose to either retire or resign instead of continuing to litigate his claims voids the Office's jurisdiction over his appeals. Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of the Agency in procuring the retirement or resignation of the Employee. Based on Employee's position, as stated during the prehearing conference and the documents of record, I find that Employee's retirement, while a difficult financial decision, was nevertheless voluntary.¹ Because this Office lacks jurisdiction over this matter, I find that I am unable to address the factual merits, if any, of this matter. Consequently, I find that this Office lacks jurisdiction over this matter.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
ADMINISTRATIVE JUDGE

¹ The Court in *Christie* stated that "[w]hile it is possible plaintiff, herself, perceived no viable alternative but to tender her resignation, the record evidence supports CSC's finding that plaintiff chose to resign and accept discontinued service retirement rather than challenge the validity of her proposed discharge for cause. The fact remains, plaintiff *had a choice*. She could stand pat and fight. She chose not to. Merely because plaintiff was faced with an inherently unpleasant situation in that her choice was arguably limited to two unpleasant alternatives does not obviate the involuntariness of her resignation. *Christie, supra* at 587-588. (citations omitted).